

ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CIVIL CASES

[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Friday, December 15, 2017.]

In re A.N., S242494. (B275914; 11 Cal.App.5th 403; Ventura County Superior Court; 2015040294.) Petition for review after the Court of Appeal affirmed an order in a juvenile truancy wardship proceeding. This case presents the following issues: (1) Is the utilization of a school attendance review board or truancy mediation process required before juvenile court proceedings can be instituted to declare a juvenile a habitual truant? (2) Does Education Code section 48264.5 require the issuance of a fourth truancy report before commencing such a proceeding?

Alvarado v. Dart Container Corp. of California, S232607. (E061645; 243 Cal.App.4th 1200; Riverside County Superior Court; RIC1211707.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: What is the proper method for calculating the rate of overtime pay when an employee receives both an hourly wage and a flat sum bonus?

Bianka M. v. Superior Court, S233757. (B267454; 245 Cal.App.4th 406; Los Angeles County Superior Court; BF052072.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Did the trial court err in denying petitioner's request for an order making findings concerning Special Immigrant Juvenile status (8 U.S.C. § 1101(a)(27)(J); see Code Civ. Proc., § 155) and placing her in her mother's sole legal and physical custody?

Black Sky Capital, LLC v. Cobb, S243294. (E064482; 12 Cal.App.5th 887; San Bernardino County Superior Court; CIVDS1416584.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Does Code of Civil Procedure section 580d permit a creditor that holds both a senior lien and a junior lien on the same parcel of real property arising from separate loans to seek a money judgment on the junior lien after the creditor foreclosed on the senior lien and purchased the property at a nonjudicial foreclosure sale?

Boling v. Public Employment Relations Bd., S242034. (D069626, D069630; 10 Cal.App.5th 853; San Diego County Superior Court; 2464-M, LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M.) Petition for review after the Court of Appeal annulled a decision of the Public Employment Relations Board. This case includes the following issues: (1) When a final decision of the Public Employment Relations Board under the Meyers-Milias-Brown Act (Gov. Code, § § 3500 et seq.) is challenged in the Court of Appeal, what standard of review applies to the Board's interpretation of the applicable statutes and its findings of fact? (2) Is a public agency's duty to "meet and confer" under the Act limited to situations in which the agency's governing body proposes to take formal action affecting employee wages, hours, or other terms and conditions of employment?

Cal Fire Local 2881 v. California Public Employees' Retirement System, S239958. (A142793; 7 Cal.App.5th 115; Alameda County Superior Court; RG12661622.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Was the option to purchase additional service credits pursuant to Government Code section 20909 (known as "airtime service credits") a vested pension benefit of public employees enrolled in CalPERS? (2) If so, did the Legislature's withdrawal of this right through the enactment of the Public Employees' Pension Reform Act of 2013 (PEPRA) (Gov. Code, §§ 7522.46, 20909, subd. (g)), violate the contracts clauses of the federal and state Constitutions?

California Building Industry Assn. v. State Water Resources Control Bd., S226753. (A137680; 235 Cal.App.4th 1430, mod. 236 Cal.App.4th 529a; San Francisco County Superior Court; CGC11516510.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Does Water Code section 181 permit the State Water Resources Control Board to approve its annual fee under the waste discharge permit program by a majority of the quorum? (2) Does Proposition 26 apply to the waste discharge permit program fee? (3) Does the Board have the initial burden of demonstrating the validity of its fee? (4) Is the fee, which is based on balancing the fees and costs of the waste discharge permit program, an invalid tax unless it separately balances the fees and costs of each of the eight program areas within the program?

Chen v. L.A. Truck Centers, LLC, S240245. (B265304; 7 Cal.App.5th 757; Los Angeles County Superior Court; BC469935.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Must a trial court reconsider its ruling on a motion to establish the applicable law governing questions of liability in a tort action when the party whose presence justified that choice of law settles and is dismissed?

Citizens for Fair REU Rates v. City of Redding, S224779. (C071906; 233 Cal.App.4th 402, mod. 233 Cal.App.4th 1479a; Shasta County Superior Court; 171377.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) Is a payment in lieu of taxes (PILOT) transferred from the city utility to the city general fund a “tax” under Proposition 26 (Cal. Const., art. XIII C, § 1, subd. (1)(e))? (2) Does the exception for “reasonable costs to the local government of providing the service or product” apply to the PILOT (Cal. Const., art. XIII C, § 1, subd. (1)(e)(2))? (3) Does the PILOT predate Proposition 26?

City and County of San Francisco v. Regents of the University of California, S242835. (A144500; 11 Cal.App.5th 1107; San Francisco County Superior Court; CPF14513434.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issue: Can a charter city require state universities that operate paid parking lots within the city to comply with an ordinance that requires parking lot operators to collect from their customers and remit to the city a tax on the fee charged for a parking space?

City of Morgan Hill v. Bushey, S243042. (H043426; 12 Cal.App.5th 34; Santa Clara County Superior Court; CV292595.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Can the electorate use the referendum process to challenge a municipality’s zoning designation for an area, which was changed to conform to the municipality’s amended general plan, when the result of the referendum — if successful — would leave intact the existing zoning designation that does not conform to the amended general plan?

City of Oroville v. Superior Court, S243247. (C077181; nonpublished opinion; Butte County Superior Court; 152036.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Is a city liable for inverse condemnation when a blockage in a city sewer main and the absence of a legally required backwater valve on private property caused sewage to back up onto that property?

Connor v. First Student, Inc., S229428. (B256075; 239 Cal.App.4th 526; Los Angeles County Superior Court; JCCP4624.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Is the Investigative Consumer Reporting Agencies Act (Civ. Code, § 1786 et seq.) unconstitutionally vague as applied to background checks conducted on a company’s employees, because persons and entities subject to both that Act and the Consumer Credit Reporting Agencies Act (Civ. Code, § 1785.1 et seq.) cannot determine which statute applies?

County of Los Angeles v. Financial Casualty & Surety Inc., S230213. (B257660; 240 Cal.App.4th 535; Los Angeles County Superior Court; SJ3898.) Petition for review after the Court of Appeal affirmed an order granting a motion to vacate the forfeiture of a bail bond in a criminal case. The court limited review to the following issue: Does the authority granted a jailer under Penal Code section 1269b “to set the time and place for the appearance of the arrested person before the appropriate court and give notice thereof” make the appearance in that court on that date “lawfully required” for purposes of forfeiting bail under Penal Code section 1305, subdivision (a)(4)?

County of San Diego v. Commission on State Mandates, S239907. (D068657; 7 Cal.App.5th 12; San Diego County Superior Court; 37-2014-0005050-CU-WM-CTL.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Did The Sexual Predator Punishment and Control Act (the voter initiative otherwise known as “Jessica’s Law” or Proposition 83), which amended and reenacted provisions of the Sexually Violent Predator Act, a statutory scheme that the Commission on State Mandates had found to include reimbursable state mandates, constitute a “change in the law” sufficient to support the Commission’s decision that some of those mandates were no longer reimbursable by the State of California?

De La Torre v. CashCall, S241434. (9th Cir. No. 14-17571; 854 F.3d 1082; Northern District of California; No. 3:08-cv-03174-MEJ.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: Can the interest rate on consumer loans of \$2,500 or more governed by California Finance Code section 22303 render the loans unconscionable under section 22302?

Delano Farms Co. v. California Table Grape Com., S226538. (F067956; 235 Cal.App.4th 967; Fresno County Superior Court; 636636-3, 642546, 01CECG01127, 01CECG02289, 01CECG02292, 11CECG00178.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Under Article 1, section 2, subdivision (a), of the California Constitution, can the California Table Grape Commission compel unwilling produce growers to contribute for generic commercial advertising?

Dr. Leevil, LLC v. Westake Healthcare Center, S241324. (B266931; 9 Cal.App.5th 450; Ventura County Superior Court; 56-2015-00465793-CU-UD-VTA.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Does Code of Civil Procedure section 1161a require a purchaser of real property at a foreclosure sale to perfect title before serving a three -day notice to quit on the occupant of the property?

Dynamex Operations West, Inc. v. Superior Court, S222732. (B249546; 230 Cal.App.4th 718; Los Angeles County Superior Court; C332016.) Petition for review after the Court of Appeal granted in part and denied in part a petition for peremptory writ of mandate. This case presents the following issue: In a wage and hour class action involving claims that the plaintiffs were misclassified as independent contractors, may a class be certified based on the Industrial Welfare Commission definition of employee as construed in *Martinez v. Combs* (2010) 49 Cal.4th 35, or should the common law test for distinguishing between employees and independent contractors discussed in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 control?

FilmOn.com v. Doubleverify, Inc., S244157. (B264074; 13 Cal.App.5th 707; Los Angeles County Superior Court; BC561987.) Petition for review after the Court of Appeal affirmed an order granting a special motion to strike in a civil action. This case presents the following issue: In determining whether challenged activity furthers the exercise of constitutional free speech rights on a matter of public interest within the meaning of Civil Code section 425.16, should a court take into consideration the commercial nature of that speech, including the identity of the speaker, the identity of the audience and the intended purpose of the speech?

Flo & Eddie, Inc. v. Pandora Media, Inc., S240649. (9th Cir. No. 15-55287; 851 F.3d 950; Central District of California; No. 2:14-cv-07648-PSG-RZ.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The questions presented are: “1. Under section 980(a)(2) of the California Civil Code, do copyright owners of pre-1972 sound recordings that were sold to the public before 1982 possess an exclusive right of public performance? 2. If not, does California’s common law of property or tort otherwise grant copyright owners of pre-1972 sound recordings an exclusive right of public performance?”

Frlekin v. Apple, Inc., S243805. (9th Cir. No. 15-17382; ___ F.3d ___, 2017 WL 3723235; Northern District of California; Nos. C 13-03451 WHA, No. C 13-03775 WHA, C 13-04727 WHA.) Request under California Rules of Court rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: “Is time spent on the employer’s premises waiting for, and undergoing, required exit searches of packages or bags voluntarily brought to work purely for personal convenience by employees compensable as ‘hours worked’ within the meaning of California Industrial Welfare Commission Wage Order No. 7?”

Gerard v. Orange Coast Memorial Medical Center, S241655. (G048039; 9 Cal.App.5th 1204; Orange County Superior Court; 30-2008-00096591.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issues: (1) Did Senate Bill 327 constitute a change in the law or a clarification in the law? (2) Is the Industrial Wage Commission Wage Order No. 5, section 11(D) partially invalid to the extent it authorizes health care workers to waive their second meal periods on shifts exceeding 12 hours? (3) To what extent, if any, does the language of Labor Code section 516 regarding the “health and welfare of those workers” affect the analysis?

Goonewardene v. ADP, LLC, S238941. (B267010; 5 Cal.App.5th 154; Los Angeles County Superior Court; TC026406.) Petition for review after the Court of Appeal reversed the dismissal of a civil action. This case presents the following issue: Does the aggrieved employee in a lawsuit based on unpaid overtime have viable claims against the outside vendor that performed payroll services under a contract with the employer?

Hamilton v. Yates, S226450. (F069608; nonpublished opinion; Fresno County Superior Court; 10CECG03520.) Petition for review after the Court of Appeal affirmed an order dismissing a civil action. This case presents the following issues: (1) Did the trial court err in concluding that there was no means of affording the indigent prisoner plaintiff in this case access to the courts to pursue his civil action? (2) Did the trial court err by dismissing the action for the plaintiff’s failure to appear in such circumstances?

Hassell v. Bird, S235968. (A143233; 247 Cal.App.4th 1336; San Francisco County Superior Court; CGC13530525.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Does an on-line publisher have a right to notice and an opportunity to be heard before a trial court orders removal of on-line content? (2) Does the statutory immunity provided by 47 U.S.C. 230(c)(1) and (e)(3) bar a trial court from enjoining a website publisher’s actions and potentially enforcing the court’s order by way of contempt or other sanctions?

Heckart v. A-1 Self Storage, Inc., S232322. (D066831; 243 Cal.App.4th 525; San Diego County Superior Court; 37-2013-00042315-CU-BT-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Was a self-storage facility’s storage rental agreement, which included provisions arguably meeting the definition of “insurance” (see Ins. Code, §§ 22, 1758.75), subject to regulation under the Insurance Code when the principal purpose of the agreement between the parties was the rental of storage space rather than the shifting and distribution of risk?

Heimlich v. Shivji, S243029. (H042641; 12 Cal.App.5th 152; Santa Clara County Superior Court; CV231939.) Petition for review after the Court of Appeal reversed an order denying a motion for costs. This case presents the following issue: When a party to an arbitration proceeding makes an offer of compromise pursuant to Code of Civil Procedure section 998 and obtains a result in the arbitration more favorable to it than that offer, how, when, and from whom does that party request costs as provided under section 998?

Heller Ehrman LLP v. Davis Wright Tremaine LLP, S236208. (9th Cir. Nos. 14-16314, 14-16315, 14-16317, 14-16318; ___ F.3d ___, 2016 WL 4011194; Northern District of California; Nos. 3:14-cv-01236-CRB, 3:14-cv-01237-CRB, 3:14-cv-01238-CRB, 3:14-cv-01239-CRB.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. As restated by the court, the question presented is: “Under California law, what interest, if any, does a dissolved law firm have in legal matters that are in progress but not completed at the time the law firm is dissolved, when the dissolved law firm had been retained to handle the matters on an hourly basis?”

Hernandez v. Restoration Hardware, S233983. (D067091; 245 Cal.App.4th 651; San Diego County Superior Court; 37-2008-00094395-CU-BT-CTL.) Petition for review after the Court of Appeal dismissed an appeal in a civil action. This case presents the following issue: Must an unnamed class member intervene in the litigation in order to have standing to appeal? (See *Eggert v. Pac. States S. & L. Co.* (1942) 20 Cal.2d 199.)

In re I.C., S229276. (A141143; 239 Cal.App.4th 304; Alameda County Superior Court; SJ12019578.) Petition for review after the Court of Appeal affirmed orders in a juvenile dependency proceeding. This case presents the following issues: (1) Did the juvenile court err by failing to determine whether the truthfulness of the minor as a hearsay declarant was “so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility” as required by *In re Lucero L.* (2000) 22 Cal.4th 1227? (2) Did the Court of Appeal err by affirming the trial court’s jurisdictional finding without reviewing the entire record for substantial evidence of the minor’s clear truthfulness?

Jameson v. Desta, S230899. (D066793; 241 Cal.App.4th 491; San Diego County Superior Court; GIS9465.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: In the case of a litigant who has been granted a fee waiver (Gov. Code, § 68631), can a county’s superior court employ a policy that has the practical effect of denying the services of an official court reporter to civil litigants who have been granted such a fee waiver, if the result is to preclude those litigants from procuring and providing a verbatim transcript for appellate review? What effect, if any, does the 2015 amendment to California Rules of Court, rule 3.55(7) and the accompanying Advisory Committee Comment have on the resolution of this issue?

Jarman v. HCR Manor Care, Inc., S241431. (G051086; 9 Cal.App.5th 807; Riverside County Superior Court; RIC10007764.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issues: (1) Does Health and Safety Code section 1430, subdivision (b), authorize a maximum award of \$500 per “cause of action” in a lawsuit against a skilled nursing facility for violation of specified rights or only \$500 per lawsuit? (2) Does section 1430, subdivision (b), authorize an award of punitive damages in such an action?

K.J. v. Los Angeles Unified School Dist., S241057. (B269864; nonpublished opinion; Los Angeles County Superior Court; BC505356.P Petition for review after the Court of Appeal dismissed an appeal from an order in a civil action. This case presents the following issue: Does the Court of Appeal lack jurisdiction over an appeal from an order imposing sanctions on an attorney if the notice of appeal is brought in the name of the client rather than in the name of the attorney?

Kim v. Toyota Motor Corp., S232754. (B247672; 243 Cal.App.4th 1366, mod. 244 Cal.App.4th 643b; Los Angeles County Superior Court; VC059206.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Is evidence of industry custom and practice admissible in a strict products liability action?

King v. CompPartners, Inc., S232197. (E063527; 243 Cal.App.4th 685; Riverside County Superior Court; RIC1409797.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Is a claim by an injured worker for medical malpractice brought against a workers’ compensation utilization review company barred by workers’ compensation as the exclusive remedy? (2) Does a workers’ compensation utilization review company that performs medical utilization reviews on behalf of employers owe a duty of care to an injured worker? (3) Did the CA err in finding that plaintiffs should be given leave to amend their complaint in this case?

Kurwa v. Kislinger, S234617. (B264641; nonpublished opinion; Los Angeles County Superior Court; KC045216.) Petition for review after the Court of Appeal dismissed an appeal in a civil action. This case presents the following issue: Can plaintiff take an appeal in the current posture of this litigation?

Liberty Surplus Ins. Corp. v. Ledesma & Meyers Construction Co., Inc., S236765. (9th Cir. No. 14-56120; ___ F.3d ___, 2016 WL 4434589; Central District of California; No. 2:12-cv-00900-RGK-SP.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: “Whether there is an ‘occurrence’ under an employer’s commercial general liability policy when an injured third party brings claims against the employer for the negligent hiring, retention, and supervision of the employee who intentionally injured the third party.”

Lopez v. Sony Electronics, Inc., S235357. (B256792; 247 Cal.App.4th 444; Los Angeles County Superior Court; BC476544.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does the six-year limitations period in Code of Civil Procedure section 340.4, which governs actions based on birth and pre-birth injuries and is not subject to tolling for minority, or the two-year limitations period in Code of Civil Procedure section 340.8, which applies to actions for injury based upon exposure to a toxic substance and is subject to tolling for minority, govern an action alleging pre-birth injuries due to exposure to a toxic substance?

Mathews v. Harris, S240156. (B265990; 7 Cal.App.5th 334; Los Angeles County Superior Court; BC573135.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issues: (1) Does a psychotherapy patient have a constitutional right of privacy in seeking psychotherapeutic treatment, even if the treatment entails a communication with a psychotherapist that refers to conduct constituting a crime? (2) Does the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.) violate a patient’s rights under the California Constitution by compelling disclosure of communications demonstrating “sexual exploitation,” which includes, among other things, downloading, streaming, and accessing through any electronic or digital media a depiction of a child engaged in an act of obscene sexual conduct?

McClain v. Sav-On-Drugs, S241471. (B265011; p Cal.App.5th 684, mod. 10 Cal.App.5th 749d; Los Angeles County Superior Court; BC325272, BC327216.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Can a purchaser of products allegedly exempt from sales tax but for which the retailer collected sales tax reimbursement bring an action to compel the retailer to seek a sales tax refund from the State Board of Equalization and remit the proceeds to purchasers?

McMillin Albany LLC v. Superior Court, S229762. (F069370; 239 Cal.App.4th 1132; Kern County Superior Court; CV279141DRL.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does the Right to Repair Act (Civ. Code, § 895 et seq.) preclude a homeowner from bringing common law causes of action for defective conditions that resulted in physical damage to the home?

Meza v. Portfolio Recovery Associates, S242799. (9th Cir. No. 15-16900; 1; 860 F.3d 1218; Northern District of California; No. 5:14-cv-03486-LHK.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: Under section 98, subdivision (a), of the Code of Civil Procedure, must an affiant in a limited jurisdiction matter be physically located and personally available for service of process at an address provided in the affiant's declaration that is within 150 miles of the place of trial?

Montrose Chemical Corp. v. Superior Court, S244737. (B272387; 14 Cal.App.5th 1306; Los Angeles County Superior Court; BC005158.) Petition for review after the Court of Appeal granted in part and denied in part a petition for peremptory writ of mandate. This case presents the following issue: When continuous property damage occurs during several periods for which an insured purchased multiple layers of excess insurance, does the rule of "horizontal exhaustion" require the insured to exhaust excess insurance at lower levels for all periods before obtaining coverage from higher level excess insurance in any period?

National Shooting Sports Foundation, Inc. v. State of California, S239397. (F072310; 6 Cal.App.5th 298; Fresno County Superior Court; 14CECG00068.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Can a statute be challenged on the ground that compliance with it is allegedly impossible? (2) If so, how is the trial court to make that determination?

Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism, S239777. (G052660; 6 Cal.App.5th 1207; Orange County Superior Court; 30-2013-00665314.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike. The court limited review to the following issue: May a motion to strike under Code of Civil Procedure section 425.16 be brought against any claim in an amended complaint or only against claims appearing for the first time in the amended complaint?

OTO, L.L.C. v. Kho, S244630. (A147564; 14 Cal.App.5th 691; Alameda County Superior Court; RG15781961.) Petition for review after the Court of Appeal reversed an order denying a petition to compel arbitration in a civil action. This case presents the following issues: (1) Was the arbitration remedy at issue in this case sufficiently “affordable and accessible” within the meaning of *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109 to require the company’s employees to forego the right to an administrative Berman hearing on wage claims? (2) Did the employer waive its right to bypass the Berman hearing by waiting until the morning of that hearing, serving a demand for arbitration, and refusing to participate in the hearing?

Pitzer College v. Indian Harbor Ins. Co., S239510. (9th Cir. No. 14-56017; 845 F.3d 993; Central District of California; 2:13-cv-05863-GW-E.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. As restated by the court, the questions presented are: (1) Is California’s common law notice-prejudice rule a fundamental public policy for the purpose of choice-of-law analysis? (2) If the notice-prejudice rule is a fundamental public policy for the purpose of choice-of-law analysis, can the notice-prejudice rule apply to the consent provision in this case?

Plantier v. Ramona Municipal Water Dist., S243360. (D069798; 12 Cal.App.5th 856; San Diego County Superior Court; 37-2014-00083195-CU-BT-CTL.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Were ratepayers seeking to challenge the water district’s method of calculating wastewater service fees required to exhaust administrative remedies by participating in the public hearing required by California Constitution, Article XIII D, section 6?

Quigley v. Garden Valley Fire Protection Dist., S242250. (C079270; 10 Cal.App.5th 1135; Plumas County Superior Court; CV1000225.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: May, as the Court of Appeal held, the governmental immunity set forth in Government Code section 850.4 be raised for the first time at trial?

Ramirez v. City of Gardena, S244549. (B279873; 14 Cal.App.5th 811; Los Angeles County Superior Court; BC609508.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Is the immunity provided by Vehicle Code section 17004.7 available to a public agency only if all peace officers of the agency certify in writing that they have received, read, and understand the agency’s vehicle pursuit policy?

Rand Resources, LLC v. City of Carson, S235735. (B264493; 247 Cal.App.4th 1080; Los Angeles County Superior Court; BC564093.) Petition for review after the Court of Appeal reversed an order granting a special motion to strike in a civil action. The court limited review to the following issues: (1) Did plaintiffs' causes of action alleging the breach of and interference with an exclusive agency agreement to negotiate the designation and development of a National Football League (NFL) stadium and related claims arise out of a public issue or an issue of public interest within the meaning of Code of Civil Procedure section 425.16? (2) Did plaintiffs' causes of action arise out of communications made in connection with an issue under consideration by a legislative body?

Regents of University of California v. Superior Court, S230568. (B259424; 240 Cal.App.4th 1296; Los Angeles County Superior Court; SC108504.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Do California public institutions of higher education and their employees have a duty of care to their students while in the classroom to warn them of and protect them from foreseeable acts of violence by fellow students?

Samara v. Matar, S240918. (B265752; 8 Cal.App.5th 796; Los Angeles County Superior Court; EC056720.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: When a trial court grants a summary judgment motion on two alternative grounds, and the Court of Appeal affirms the judgment on only one ground and expressly declines to address the second, does the affirmed judgment have preclusive effect as to the second ground?

Scholes v. Lambirth Trucking Co., S241825. (C070770; 10 Cal.App.5th 590; Colusa County Superior Court; CV23759.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Are the double damages provisions of Civil Code section 3346 applicable to negligently caused fire damage to trees?

Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc., S232946. (B256314; 244 Cal.App.4th 590, mod. 245 Cal.App.4th 63b; Los Angeles County Superior Court; YC067332.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) May a court rely on non-legislative expressions of public policy to overturn an arbitration award on illegality grounds? (2) Can a sophisticated consumer of legal services, represented by counsel, give its informed consent to an advance waiver of conflicts of interest? (3) Does a conflict of interest that undisputedly caused no damage to the client and did not affect the value or quality of an attorney's work automatically (i) require the attorney to disgorge all previously paid fees, and (ii) preclude the attorney from recovering the reasonable value of the unpaid work?

Sierra Club v. County of Fresno, S219783. (F066798; 226 Cal.App.4th 704; Fresno County Superior Court; 11CECG00706, 11CECG00709, 11CECG00726.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents issues concerning the standard and scope of judicial review under the California Environmental Quality Act. (CEQA; Pub. Resources Code, § 21000 et seq.)

Solus Industrial Innovations, LLC v. Superior Court, S222314. (G047661; 229 Cal.App.4th 1291; Orange County Superior Court; 30-2012-00581868.) Petition for review after the Court of Appeal granted a petition for writ of peremptory mandate. This case presents the following issue: Does federal law preempt a district attorney's attempt to recover civil penalties under California's unfair competition law based on an employer's violation of workplace safety standards that resulted in the deaths of two employees?

Stoetzel v. State of California, S244751. (A142832; 14 Cal.App.5th 1256; San Francisco County Superior Court; CJC11004661.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case includes the following issue: Does the definition of "hours worked" found in the Industrial Wage Commission's Wage Order 4, as opposed to the definition of that term found in the federal Labor Standards Act, constitute the controlling legal standard for determining the compensability of time that correctional employees spend after signing in for duty and before signing out but before they arrive at and after they leave their actual work posts within a correctional facility?

Sweetwater Union School Dist. v. Gilbane Building Co., S233526. (D067383; 245 Cal.App.4th 19; San Diego County Superior Court; 37-2014-00025070-CU-MC-CTL.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike in a civil action. This case presents the following issues: (1) Is testimony given in a criminal case by persons who are not parties in a subsequent civil action admissible in that action to oppose a special motion to strike? (2) Is such testimony subject to the conditions in Evidence Code section 1290 et seq. for receiving former testimony in evidence?

T-Mobile West LLC v. City and County of San Francisco, S238001. (A144252; 3 Cal.App.5th 334, mod. 3 Cal.App.5th 999c; San Francisco County Superior Court; CGC11510703.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Is a local ordinance regulating wireless telephone equipment on aesthetic grounds preempted by Public Utilities Code section 7901, which grants telephone companies a franchise to place their equipment in the public right of way provided they do not “incommode the public use of the road or highway or interrupt the navigation of the waters”? (2) Is such an ordinance, which applies only to wireless equipment and not to the equipment of other utilities, prohibited by Public Utilities Code section 7901.1, which permits municipalities to “exercise reasonable control as to the time, place and manner in which roads, highways, and waterways are accessed” but requires that such control “be applied to all entities in an equivalent manner”?

T.H. v. Novartis Pharmaceuticals Corp., S233898. (D067839; 245 Cal.App.4th 589; San Diego County Superior Court; 37-2013-00070440-CU-MM-CTL.) Petition for review after the Court of Appeal reversed an order in a civil action. The court limited review to the following issue: May the brand name manufacturer of a pharmaceutical drug that divested all ownership interest in the drug be held liable for injuries caused years later by another manufacturer’s generic version of that drug?

Troester v. Starbucks Corp., S234969. (9th Circ. No. 14-55530; nonpublished order; Central District of California; 2:12-cv-07677-GAF-PJW.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: Does the federal Fair Labor Standard Act’s *de minimis* doctrine, as stated in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 692 (1946) and *Lindow v. United States*, 738 F.2d 1057, 1063 (9th Cir. 1984), apply to claims for unpaid wages under California Labor Code sections 510, 1194, and 1197?

Union of Medical Marijuana Patients, Inc. v. City of San Diego, S238563. (D068185; 4 Cal.App.5th 103; San Diego County Superior Court; 37-2014-00013481-CU-TT-CTL.) Petition for review after the Court of Appeal affirmed the judgment in an action for administrative mandate. This case presents the following issues: (1) Is the enactment of a zoning ordinance categorically a “project” within the meaning of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)? (2) Is the enactment of a zoning ordinance allowing the operation of medical marijuana cooperatives in certain areas the type of activity that may cause a reasonably foreseeable indirect physical change to the environment?

United Auburn Indian Community of Auburn Rancheria v. Brown, S238544. (C075126; 4 Cal.App.5th 36; Sacramento County Superior Court; 34201380001412CUWMGDS.) Petition for review after the Court of Appeal affirmed the judgment in action for writ of administrative mandate. This case presents the following issue: May the Governor concur in a decision by the Secretary of the Interior to take off-reservation land in trust for purposes of tribal gaming without legislative authorization or ratification, or does such an action violate the separation of powers provisions of the state Constitution?

United Educators of San Francisco etc. v. California Unemployment Ins. Appeals Bd., S235903. (A142858, A143428; 247 Cal.App.4th 1235; San Francisco County Superior Court; CPF 12-512437.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents issues concerning the entitlement of substitute teachers and other on-call paraprofessional employees to unemployment insurance benefits when they are not called to work during a summer school term or session.

United Riggers & Erectors, Inc. v. Coast Iron & Steel Co., S231549. (B258860; 243 Cal.App.4th 151; Los Angeles County Superior Court; VC062679.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court limited review to the following issue: May a contractor withhold retention payments when there is a good faith dispute of any kind between the contractor and a subcontractor, or only when the dispute relates to the retention itself?

Voris v. Lampert, S241812. (B265747; nonpublished opinion; Los Angeles County Superior Court; BC408562.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: Is conversion of earned but unpaid wages a valid cause of action?

Wilson v. Cable News Network, Inc., S239686. (B264944; 6 Cal.App.5th 822; Los Angeles County Superior Court; BC559720.) Petition for review after the Court of Appeal reversed an order granting a special motion to strike in a civil action. This case presents the following issue: In deciding whether an employee's claims for discrimination, retaliation, wrongful termination, and defamation arise from protected activity for purposes of a special motion to strike (Code of Civ. Proc., § 425.16), what is the relevance of an allegation that the employer acted with a discriminatory or retaliatory motive?